United Nations S/2002/614

Security Council

Distr.: General
4 June 2002
English
Original: French

Letter dated 4 June 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Haiti, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

02-42164 (E) 170602 210602

Annex

[Original: French]

Letter dated 31 May 2002 from the Chargé d'affaires of the Permanent Mission of Haiti to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On instructions from my Government, I have the honour to transmit herewith the report submitted to the Counter-Terrorism Committee by the Republic of Haiti pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

The Haitian Government reaffirms its support for and cooperation with the Counter-Terrorism Committee in the conduct of its activities.

(*Signed*) Nicole **Romulus**
Chargé d'affaires a.i.

Enclosure

Report submitted to the Counter-Terrorism Committee by the Government of the Republic of Haiti pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Introduction

The terrorist attacks of 11 September 2001 against the United States of America appalled the collective conscience. In terms of the scale of human and material losses, these attacks are a major tragedy overshadowing the beginning of the twenty-first century. The growth of terrorism poses a grave threat to mankind and may constitute a threat to international peace and security. In the face of this scourge, a coherent and coordinated collective response is needed, within the framework of the Charter of the United Nations.

Resolution 1373 (2001) concerning counter-terrorism, adopted on 28 September 2001 by the Security Council under Chapter VII of the Charter of the United Nations, is integral to this process. Paragraph 6 provides:

> "*Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and *calls upon* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution".

The Republic of Haiti, as an original signatory of the Charter of the United Nations, attaches great importance to respect for the Charter. It is determined to cooperate fully with the United Nations, its Member States, and more particularly with the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, for the full achievement of its purposes and objectives.

Since it was facing a grave political crisis which has convulsed Haiti since the most recent elections, in May 2001,[1] the Government was not able to submit its report to the Committee in December 2001. Another factor also needs to be stressed, namely the lack of skilled and available human resources in this area.

The Security Council, in its ministerial declaration of 12 November 2001, adopted resolution 1377 (2001), in which it stressed the need to explore ways in which States can be assisted in implementing the provisions of resolution 1373 (2001). In this context, the Government plans to submit a request for technical assistance covering several fields such as:

- The drafting of laws against terrorism;
- Financial legislation and practice;
- Customs legislation and practice;

[1] The Government of the Republic of Haiti is making strenuous efforts to achieve a lasting solution to the political crisis. In April 2002 it signed an agreement with the Organization of American States (OAS) on the strengthening of democracy.

– Legislation and practice in the area of immigration;

– Legislation and practice in the area of extradition.

Pending the formulation and operationalization of this technical assistance, the Government submits the present report to the Committee. The complexity of the legislation and areas of activity encompassed by resolution 1373 (2001) made it impossible to submit a complete and detailed report. This work requires the mobilization of many skilled human resources covering various areas of the life of the State. The institutional weakness of the State, the political crisis and the lack of expertise made it impossible to do this within the time available. Thus, several areas were not taken up, because of the weakness of our penal system.

Paragraph 1 of resolution 1373 (2001)

Subparagraph (a)

Haitian legislation does not contain provisions which specifically aim to prevent and suppress the financing of terrorist acts. The same goes for Haitian financial practice.[2] This omission may be explained by the fact that the Republic of Haiti has not maintained relations with terrorist organizations and has not had to deal with terrorist acts of the type indicated in resolution 1373 (2001). Nevertheless, following the events of 11 September 2001, and in the context of the follow-up to resolution 1373 (2001), certain States[3] have sought the assistance of the Government of the Republic of Haiti in requesting the Haitian banking institutions to freeze the bank accounts of certain individuals or non-governmental organizations linked with terrorist organizations, as required. On 20 October 2001, the Government received a request from a State for cooperation in blocking the assets of 27 individuals and entities involved in the financing of terrorism. On 27 December 2001, a further request accompanied by a list was transmitted to it. These requests also concerned certain financial institutions linked with the financing of terrorism. In accordance with resolution 1373 (2001) and out of a desire for cooperation, these requests were taken up at the highest level of the State.[4] The Republic of Haiti has not found any accounts linked to terrorism in its financial networks.

Subparagraph (b)

The Haitian penal system has been unable to criminalize certain acts, and does not make any explicit reference to the activities listed in this subparagraph. There is therefore a legal gap to be filled in this sphere. The impact of this gap is all the greater in that the Republic of Haiti is not a party to the International Convention for the Suppression of the Financing of Terrorism, adopted by the United Nations General Assembly on 9 December 1999. It is not a signatory State either.

Nevertheless, the lack of legal provisions does not in any way mean that the Republic of Haiti can be a transit territory for the financing of terrorist acts. Since

[2] However, Haitian legislation does contain provisions on the laundering of drug money. Any bank deposit of over 50,000 gourdes must show the origin of the funds. US$ 1 = 26 gourdes, according to the day's exchange rate (27 May 2002).

[3] The Government has received two requests since the events of 11 September 2001.

[4] The matter was considered by the following bodies: Cabinet of the President of the Republic; Office of the Prime Minister; Office of the Minister of the Economy and Finance; Office of the Minister for Foreign Affairs and Worship.

the attacks of 11 September 2001, and out of a concern to comply with Security Council resolution 1373 (2001), the Haitian Government has been monitoring financial flows in the country more closely in order to protect the integrity of its financial system.

In the near future, the Government of the Republic of Haiti will take steps to initiate the process leading to the ratification of this instrument. It will also be necessary to adapt the Haitian Penal Code in order to criminalize these activities. The Government will need technical assistance in this sphere, as defined in the Security Council statement of 12 November 2001.

Subparagraph (c)

Haitian legislation in this area seems, to some extent, inadequate. Indeed, as indicated in the preceding paragraphs, the existing texts do not specifically refer to funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts. They are intended to cover normal legal situations, for example, judicial seizure after a trial. It is difficult to speak of Haitian practice in this area after the events of 11 September 2001.

It should be noted, however, that the activities of banks and financial institutions in Haiti are monitored by the Bank of the Republic of Haiti. This role, in accordance with article 19 (a and c) of the act of 17 August 1979 establishing the Bank of the Republic of Haiti, is assigned to the department for the supervision of banks and financial institutions of the Bank of the Republic of Haiti. Moreover, the operations of banks and banking activities in the territory of the Republic of Haiti are governed by a decree of 14 November 1980. In accordance with article 11 of that decree, any individual convicted of a crime under ordinary law is prohibited from exercising the profession of banker. Pursuant to article 16 of the same decree, the Bank of the Republic of Haiti, when considering an application for authorization to operate a bank, must, inter alia, verify the validity of the documents submitted, and the financial status and background of the applicant.

A bank or financial institution which does not respect the legal provisions on operations may have its operating authorization revoked by the Secretary of State for Finance and Economic Affairs. When an operating authorization has been revoked, in accordance with article 28 of that decree the Secretary of State for Finance must notify the Bank of the Republic of Haiti and the Secretary of State for Trade and Industry. If the Bank of the Republic suspects that a bank or individual is carrying out illegal operations, it will demand an inspection of the books, accounts or files of that individual or company. In the event of violation of the law, a fine of from 25,000 to 50,000 gourdes is applicable.

In view of all the foregoing, certain reforms are needed in the legislation governing the operations of banks and financial institutions in Haiti. These texts do not make any reference to terrorist acts. This is another area where technical assistance will be necessary.

Subparagraph (d)

Some information has already been provided in the preceding paragraphs. The activities listed in this subparagraph do not exist in Haiti. As of the date of this report, no person or entity in Haiti has ever used the Haitian territory to make

funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit terrorist acts. The measures which have been taken consist of greater vigilance in monitoring financial flows within Haiti.

Paragraph 2 of resolution 1373 (2001)

Subparagraph (a)

The Republic of Haiti, as a peace-loving State, has never provided any form of support, whether active or passive, to entities or persons involved in terrorist activities. Its territory has never been used for the recruitment of members of terrorist organizations, still less for the supply of weapons to terrorists. The Haitian Penal Code does not have explicit provisions in this area. The draft amended Code should take these aspects into account.

Nevertheless, certain acts or actions which may be equated with terrorism are envisaged in and punished by the Penal Code. In accordance with article 224 of the Penal Code "Any criminal association targeted at persons or property is a crime against the public order",[5] and, pursuant to article 226 of the Code, is punished by a term of forced labour. All other individuals providing any kind of service within such groups and those who knowingly and voluntarily provide weapons, ammunition and instruments of crime to such groups or their subdivisions are punishable by imprisonment (article 227 of the Penal Code).

A decree of 14 January 1988 establishing the conditions for obtaining, possessing and using firearms, ammunition, explosives and other categories of dangerous weapons in the national territory should also be noted. In accordance with article 1 of the decree, the Haitian armed forces[6] have a monopoly on the manufacture, import, export, utilization and possession of military weapons and ammunition, and of military equipment. They also have responsibility for controlling all firearms, ammunition and destructive devices in the national territory. Any individual in Haitian territory who wishes to acquire a firearm and ammunition must be 18 years of age and must have obtained express authorization from the police (article 6 of the decree). It is also important to note the provisions of article 7, which prohibits the bearing of firearms in the national territory and the possession of weapons, ammunition or destructive devices, even at home, by any individual who does not have a licence or is not specially authorized by the police.

Any offender is punishable by a penalty not exceeding five (5) years and a fine not exceeding 5,000 gourdes, to be imposed by the correctional court.

Subparagraph (b)

The exchange of information may be effected through the intelligence services. The Republic of Haiti is prepared to intensify the exchange of information between intelligence services. However, the national police of Haiti is a new institution. It has only seven (7) years of experience and has a serious shortage of resources. It has

[5] Haitian Penal Code.

[6] This role is currently assigned to the national police of the Republic of Haiti, because the armed forces of Haiti were dissolved in 1994.

not had to deal with cases of exchange of intelligence concerning the perpetration of terrorist acts in other States.

Nevertheless, it has programmes of cooperation with other States for sharing information in the area of drug trafficking and transnational crime associated therewith.

Since the events of 11 September 2001, many efforts have been made to monitor borders, and the entry and departure of aliens.

In this sphere, there is an essential need to develop numerous cooperation agreements with other States.

Subparagraph (c)

There is no national legislation on territorial asylum. This legal void is filled by Haiti's accession to the United Nations Convention on Territorial Asylum and the Havana Convention on Asylum of 20 February 1928.

Nevertheless, article 3 (4) of the organic law of the immigration and emigration service of 26 December 1978 authorizes the Haitian Government to deny entry to the territory of the Republic to persons who have engaged in or are engaging in activities which form part of a plan of criminal activities organized by several persons acting together to commit an offence which is punishable under Haitian law. This competence also covers persons who have engaged in acts of espionage or subversion against democratic institutions. In accordance with paragraphs 6 and 7 of the same article, the Haitian Government may deny entry to persons who have worked for or are working for, or have incited or are inciting, the overthrow of the constitutional order established in Haiti; and persons who are alleged to have committed acts of violence which may infringe on life or public security in Haiti or who belong to an association which is likely to commit such acts.

Moreover, an alien holding a residence permit in Haiti whose conduct has been unsatisfactory may, in accordance with article 35 of the same law, be denied the right to renew the permit. He is given a grace period of fifteen (15) days from the date of expiry of his permit to enable him to leave the territory of the Republic.

As of the date of this report, the Republic of Haiti has not had to deal with the presence of terrorists in its territory. There is therefore no Government practice in terms of decisions taken to exclude terrorists from the territory.

Subparagraph (d)

The Republic of Haiti is a peace-loving State. It maintains friendly relations with all the countries of the world, particularly those of the Americas region. The Haitian Government would not allow terrorists to use its territory to commit terrorist acts against other States, particularly neighbouring States. The Haitian Penal Code does not contain specific references to this question. The Republic of Haiti is a party to the Final Act of the Second International Peace Conference, signed at The Hague on 18 October 1907 and ratified on 23 August 1909.

The Government of the Republic will need technical assistance in the area of drafting laws against terrorism.

Subparagraph (e)

As previously indicated, the penal process in the Haitian judicial system has many weaknesses. Many acts or activities are not expressly covered by the Penal Code. Reform efforts are under way. Since Haiti is a country which has not experienced terrorism, it is difficult to find examples in Haitian jurisprudence of convictions obtained and sentences given.

Nevertheless, the absence of steps taken to establish terrorist acts as serious criminal offences does not in any way represent a green light to terrorists to make use of the territory of the Republic of Haiti. If it were confronted with this situation, the Government would study all ways and means for responding to the gravity of such acts.

Subparagraph (f)

There are no formal procedures and mechanisms in place which specifically concern terrorist issues on the basis of Security Council resolution 1373 (2001). Nevertheless, since the adoption of this resolution, the Government of the Republic of Haiti has received very few requests for assistance on the part of other States in their efforts to combat terrorism. Two requests were sent to it by the Government of a friendly State.[7] They were processed as a matter of high priority at the upper levels of power.

In this sphere, technical assistance would be very appropriate.

Subparagraph (g)

The Republic of Haiti has few resources for border control. It is important to note that it has only one land border, with the Dominican Republic, and has maritime borders with the Commonwealth of the Bahamas, Colombia, Cuba, the Dominican Republic, Jamaica and the Turks and Caicos Islands. No terrorist movements have ever crossed the border. However, many former Haitian military personnel who have taken refuge in the neighbouring Republic organize frequent commando operations aimed at overthrowing the constitutional order in Haiti or assassinating the Head of State.[8] There have been no cases of the use of maritime borders by armed individuals.

With regard to the issuance of identity papers and travel documents, a strict procedure has been established,[9] based on the act of 25 November 1959 governing immigration into and emigration from Haiti. Currently, aliens do not need a visa to travel to Haiti[10] for any stay not exceeding three months. An alien wishing to reside in Haiti must submit a request to the Haitian consulate in his jurisdiction, along with full information, including nationality and profession, and references in Haiti. It is

[7] These requests were concerned with the freezing of the bank accounts of individuals or banking and financial institutions suspected of being linked to terrorist organizations.

[8] On 29 July 2001, a commando group attacked several police stations and the police academy. There were several victims, including the superintendent in charge of the centre. After committing this outrage, the commandos fled across the border. On 17 December 2002, a commando group attacked the presidential palace and made an attempt on the life of the Head of State. The commandos fled, and crossed the border.

[9] This procedure had been established well before the events of 11 September 2001.

[10] Except for China, the Dominican Republic and the Russian Federation ...

the Ministry of the Interior which, after reviewing the case, issues the residence permit. Passports are also issued by the immigration service of the Ministry of the Interior on the basis of a very strict procedure.[11]

Paragraph 3 of resolution 1373 (2001)

Subparagraph (a)

The national police is developing general programmes of cooperation with the police of other States. These programmes are mainly concerned with combating drug trafficking. The Haitian Government, in the context of following up this resolution, reiterates its desire to cooperate with any relevant State or States. It is prepared to intensify the exchange of information among intelligence services.

Subparagraph (b)

The prevention of terrorist acts should be and is today an international obligation for all States, just like other obligations. It is their duty to contribute to the fulfilment of this obligation. The Republic of Haiti is a State which fulfils its international commitments. On this basis, the Haitian Government has always cooperated with the main international mechanisms for the monitoring of international law. The attacks of 11 September 2001 and the adoption of resolution 1373 (2001) reinforced this political will.

In addition to the existing information mechanisms, other mechanisms are under consideration with the objective of achieving greater effectiveness. Instructions have been given to the entities concerned, particularly the national police, with a view to greater cooperation in this sphere.

Subparagraph (c)

In the efforts to prevent and suppress terrorist acts, the Republic of Haiti is bound by a number of international instruments. It has ratified the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; the Convention on Offences and Certain Other Acts Committed on Board Aircraft; the International Convention against the Taking of Hostages; the Convention for the Suppression of Unlawful Seizure of Aircraft; and the Convention on the Physical Protection of Nuclear Material. State practice always moves in the direction of greater respect for these conventions. The Government is prepared to study any new request in this area. Measures will be taken at a future date to start the process of ratification of other conventions which have not yet been ratified.

With regard to bilateral undertakings, the Republic of Haiti has not signed bilateral agreements in this area. This omission may be explained by the fact that the need has never arisen, in view of the nature of the Haitian State. Nevertheless, the Government is prepared to study any request in this respect. It should also be stressed that quite apart from formal arrangements, in practice the Government has

[11] A tax identity card, birth certificate, five photographs and the payment of the applicable fees are required. These documents are reliable and are checked at the time of departure by the immigration inspectors.

always shown cooperation. After the events of 11 September 2001, it received requests of this kind which were studied by the supreme authorities.

Subparagraph (d)

The signing and ratification of relevant international conventions remains one of the Government's priority objectives. In this context, the international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism, are a particular priority. The delay in this area results from the political crisis being experienced in Haiti.

Subparagraph (e)

The conventions ratified by the Republic of Haiti have become an integral part of the domestic legal order. They are published in the *Official Gazette* and are transmitted to all judges. The Government ensures their full respect by nationals, who are otherwise liable to prosecution.

Harmonization with the Penal Code and the Code of Criminal Procedure has yet to be undertaken. The Government will need technical assistance in this sphere.

Subparagraph (f)

The Republic of Haiti does not yet have legislation, procedures and mechanisms on territorial asylum. There is therefore a legal gap which needs to be filled. However, the effect of this gap is lessened by Haiti's accession to the United Nations Convention on Territorial Asylum and the Havana Convention on Asylum.[12] The Republic has not had many cases of asylum-seekers.[13] The requests received have not been accepted.

Subparagraph (g)

See above. It merely needs to be stressed that the Government has never received requests for extradition relating to persons linked with terrorism. The Republic of Haiti has signed an extradition treaty with the United States of America. However, that treaty does not contain specific references to persons involved in terrorist acts. The Republic of Haiti is also a party to the Inter-American Convention on Extradition.

Final comments on the implementation of the resolution: the drafting of reports.

The Republic of Haiti has experienced great difficulty in preparing this report. There are several reasons for this. It is important to note the lack of skilled human resources. The report refers to multidimensional issues which require coordination between several governmental and State entities. This is not always easy in developing countries, particularly the least developed countries (LDCs), which lack expertise in many fields. The time factor is also significant. A third factor is that the legislation of certain States, particularly Haiti, has not yet been amended to take into account the multiple demands of international life. In this context, scrupulous respect for the Security Council resolutions adopted within the context of

[12] The cases received over the past five years did not involve issues of terrorism.

[13] The cases received concerned matters relating to ordinary law and drugs.

Chapter VII of the United Nations Charter may give rise to enormous difficulties for these countries.

It is therefore important to mobilize technical assistance for a number of LDCs to help them ensure better implementation of the resolutions of the Security Council.

The Republic of Haiti considers that the prevention and suppression of terrorism requires a collective response, within the framework of the United Nations, which must continue to play a central role. It believes that it is also necessary to conclude rapidly the negotiations on a general convention against terrorism so as to further strengthen the international legal framework of the struggle against terrorism.